

Brian O'Keefe - 90244
Name and Inmate Booking Number

Lovelock Correctional Center
Place of Confinement

1200 Prison Road
Mailing Address

Lovelock, Nevada 89419
City, State, Zip Code

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRIAN KERRY O'KEEFE,
Plaintiff

vs.

- (1) CLERK OF COURT, U.S. DISTRICT COURT,
(2) DEBRA K. KEMPT,
(3) _____,
(4) _____,
(5) _____,
Defendant(s).

Case No. _____
(To be supplied by Clerk of Court)

CIVIL RIGHTS COMPLAINT
BY AN INMATE

- ☒ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

☒ Jury Trial Demanded

- SEE EXHIBITS 1, 2 AND 3 ATTACHED
AS PRIMA FACIE EVIDENCE

A. JURISDICTION

- 1) This Court has jurisdiction over this action pursuant to:
☐ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
☒ 28 U.S.C. § 1331; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)
☐ Other: _____
- 2) Institution/city where Plaintiff currently resides: Lovelock Correctional Center / Lovelock, NV.
- 3) Institution/city where violation(s) occurred: Las Vegas / Reno and Las Vegas NV.

B. DEFENDANTS

1. Name of first Defendant: CLERK OF COURT, U.S. DIST. COURT. The first Defendant is employed as:
Clerk of Court, U.S. District Court at Rem Division and Law Vegas Division
(Position of Title) (Institution)
2. Name of second Defendant: Debra K. Keapi. The second Defendant is employed as:
Clerk of Court, U.S. District Court at Rem Div and Law Vegas Div.
(Position of Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as:
_____ at _____
(Position of Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as:
_____ at _____
(Position of Title) (Institution)
5. Name of fifth Defendant: _____. The fifth Defendant is employed as:
_____ at _____
(Position of Title) (Institution)

If you name more than five Defendants, answer the questions listed above for each additional Defendant on a separate page.

Note Defendants Reckless Disregard of ECF No. 58. (see EXH. 2)

C. NATURE OF THE CASE

Briefly state the background of your case.

ON 8/25/2022, Plaintiff attempted his U.S. FIRST Amendment (Plaintiff's attempt to file a motion to reopen federal habeas civil case no. specifically, 2:11-cv-02109.. Subsequent the Federal Court [08/15/2022 Document 58 - J. Mahan] now removing Federal Public Defender as counsel of record where before Plaintiff was (ECF No. 44) restricted pursuant previous 2014 ORDER prohibiting Plaintiff then O'Leary from filing any papers while represented by Counsel as sole basis. Plaintiff has called Clerk of Court at (775) 666-5800 five times, lastly and noted on 8/20/22, 9/2/22, 9/6/22 and 10/20/22 informing Plaintiff is no longer a restricted filer. Clerks tell me that they are acting outside the judiciary by E-mail relying on eight year old order, no longer applicable. Any document-motion-notice of (2) appeal is faced with a full ban, and rejected or returned un filed depriving Plaintiff his First Amendment Right of access to the court for a redress of grievances. Deprivation also of civil rights of due process, equal protection of the law, under the Fourteenth U.S. Const. Amendment and Fed. R. Civ. 2 (a)(b)(c).

D. CAUSE(S) OF ACTION

CLAIM 1

Deprivation by defendant

1. State the constitutional or other federal civil right that was violated: FIRST AMENDMENT OF U.S. CONSTITUTION, Right to Petition for Redress of Grievances - Fed R.Civ.P. 60(b)(6) Right to reopen case by motion under other Federal law.
2. Claim 1. Identify the issue involved. Check only one. State additional issues in separate claims.

- ☐ Basic necessities ☐ Medical care ☐ Mail
- ☐ Disciplinary proceedings ☐ Exercise of religion ☐ Property
- ☒ Access to the court ☐ Excessive force by officer ☐ Retaliation
- ☐ Threat to safety ☐ Other: _____

3. Date(s) or date range of when the violation occurred: May 2022 to Current Oct. 31, 2022

- see EXHIBIT ONE attached
4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 1. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

- 1) Defendant with respect to Clerk of Court and/or Debra L. Kempf under "respondent superior" is placing a full ban on all actions attempted to be filed in specific criminal case no. 2:11-cv-02109 and returning all motions and papers, pursuant EXHIBIT ONE ATTACHED ON 8/25/2022.
- 2) After Defendant was given conscious knowledge that the Court entered an Order removing counsel from record, all Clerk still utilize expensed order no. 44 (case no. 2:11-cv-02109) by new ORDER filed 08/15/2022 thereby terminating O'Keefe as a restricted filer. see EXHIBIT 2 ATTACHED AND EXHIBIT THREE
- 3) Plaintiff called Clerk of Court again (Kemp) on 10/28/2022 (1:15 pm) informing another attempt will be made for a Rule 60(b)(6) motion being informed I had counsel on record still - mistakenly or not - and that any filings attempted by Plaintiff O'Keefe to be filed in specific case no. 2:11-cv-02109 would be again probably rejected.
- 4) Plaintiff attempts to use Section 1983 law of Buck v. Davis, 137 S.Ct 757 (2021) and Bray v. Mattheucci, 986 F.3d 1128, 1134 (2021) to reopen under Fed.R.Civ.P. 60(b)(6) in record (3) with the U.S. FIRST AMENDMENT for a redress of grievances.
- INVOLVE Boards v. Smith, 430 U.S. 817, 828 (1977)

CLAIM 2

Deprivation by Defendants

1. State the constitutional or other federal civil right that was violated: FOURTEENTH CONST. AMEND.
Right to Due Process of Law and access to the courts

2. Claim 2. Identify the issue involved. Check only one. State additional issues in separate claims.

☐ Basic necessities

☐ Medical care

☐ Mail

☐ Disciplinary proceedings

☐ Exercise of religion

☐ Property

☒ Access to the court

☐ Excessive force by officer

☐ Retaliation

☐ Threat to safety

☐ Other: _____

3. Date(s) or date range of when the violation occurred: May 2022 to Oct. 31, 2022
 • SEE EXHIBIT ONE ATTACHED

4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 2. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

- 1) The Clerk of Court and for Debra K. Krapi under "respondent superior" is depriving Plaintiff his FIRST AMENDMENT RIGHT by rejecting any and all papers submitted under case no. 2:11-cv-02109 specifically resulting in the deprivation of my procedural to substantive due process with reckless disregard of Order 25 ECF No. 56.
- 2) The Clerk of Court rejected again all papers i.e. - specifically here Plaintiff's Motion under Fed. R. Civ. P. 60(b)(6) on 8/25/2022.
- 3) Pursuant Section, Bunker to Smith, 430 U.S. 817, 828 (1977) prisoners have the fundamental Constitutional Right to adequate, effective, and meaningful "access to courts".
- 4) Defendants ultimately deprived Plaintiff his procedural due process right afforded under the FIRST AMENDMENT AND PURSUANT Fed. R. Civ. P. 60(b)(6).

CLAIM 3

Deprivation by Defendant

1. State the constitutional or other federal civil right that was violated: FOURTEENTH AMENDMENT, RIGHT TO EQUAL PROTECTION UNDER FIRST AMENDMENT AND FRCP 6(b)(6)

2. Claim 3. Identify the issue involved. Check only one. State additional issues in separate claims.

- ☐ Basic necessities ☐ Medical care ☐ Mail
☐ Disciplinary proceedings ☐ Exercise of religion ☐ Property
☒ Access to the court ☐ Excessive force by officer ☐ Retaliation
☐ Threat to safety ☐ Other: _____

3. Date(s) or date range of when the violation occurred: MAY 2022 to OCT 31 2022
 • SEE EXHIBIT ONE ATTACHED

4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 3. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

- 1) With reckless disregard the
Defendants deprived Plaintiff his federal rights of
equal protection under the FIRST AMEND. and F.R.Civ.P 6(b)(6)
On 8/25/2022 to 10/31/22 by rejecting Motion under
F.R.Civ.P 6(b)(6) to reopen criminal case.
 • SEE EXHIBIT ONE ATTACHED
- 2) Equal protection applies to a class of one under the 14th Amend.
 • see Reed v Reed, 404 U.S. 71, 75-76 (1971); see also Village
of Willow Brook v. O'Heir, 528 U.S. 562, 564 (2000)
Here, by rejecting Plaintiff's Motion for Review by
the district court outside the judiciary was an
act depriving Plaintiff his Fed. Const. Rights.
- 3) INVILLE BUCK v. DAVIS, 137 S.Ct 759 (2017)
INVILLE Bess v. McHeucci, supra
INVILLE Camar v. Gwillee, 391 U.S. 234 (1968)

If you assert more than three claims, answer the questions listed above for each additional claim on a separate page.

E. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while incarcerated? ☒ Yes ☐ No
2. Has this Court or any other court designated you as subject to "three strikes" under 28 U.S.C. § 1915(g)? ☐ Yes ☒ No
3. If you have "three strikes" under 28 U.S.C. § 1915(g), does this complaint demonstrate that you are "under imminent danger of serious physical injury"? ☐ Yes ☐ No

F. REQUEST FOR RELIEF

Entire § 1915 costs to
I believe I am entitled to the following relief: 1.) Filing fee to be paid by the Clerk of Court as incidental fee & damages;
2.) Injunctive Relief by Injunction- Order directing Clerk of U.S. District Court to file Rule 60(b)(6) Motion specifically under case no. 2:11-cv-02109-GMN-VCF; 3.) Punitive Damages;
4.) Appointment of Counsel to assist whereable Court was issued; 5.) Any other relief deemed by this Court; 6) Detain

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Brian O'Keefe

(name of person who prepared or helped prepare this complaint if not the plaintiff)

Joe L. O'Keefe

(signature of plaintiff)

10/30/2022

(date)

6) Serve "Complaint" to Clerk of Court for Plaintiff!

ADDITIONAL PAGES

You must answer all questions concisely in the proper space on the form. Your complaint may not be more than 30 pages long. It is not necessary to attach exhibits or affidavits to the complaint or any amended complaint. Rather, the complaint or any amended complaint must sufficiently state the facts and claims without reference to exhibits or affidavits. If you need to file a complaint that is more than 30 pages long, you must file a motion seeking permission to exceed the page limit and explain the reasons that support the need to exceed 30 pages in length.

RE: OKEEFE 2-11-CV-02109

Reno Docket <docketreno@nvd.uscourts.gov>

Thu 8/25/2022 8:19 AM

To: NDOC LCC Law Library <LCCLawLibrary@doc.nv.gov>

1 attachments (60 KB)

1RETURN O KE EFE 2-11-CV-02109 pdf,

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Morning,

Please return the attached documents to Mr. O'Keefe unfiled pursuant to ECF No. 52 directing: "The Clerk of Court is again directed to return any further filings filed pro per by Petitioner Brian Kerry OKeefe."

Thank you.

NOTE: ECF No. 52 refers and relies on

From: NDOC LCC Law Library <LCCLawLibrary@doc.nv.gov>

Sent: Thursday, August 25, 2022 7:41 AM

To: Reno Docket <docketreno@nvd.uscourts.gov>

Subject: OKEEFE 2-11-CV-02109

ECF No. 44 .

*See ECF 44 ATTACHED AS
EXHIBIT 3*

CAUTION - EXTERNAL:

*LCC Law Library E-filing
1200 Prison Rd.
Lovelock, Nevada 89419*

775-977-5382

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EXHIBIT ONE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BRIAN KERRY O'KEEFE,

Case No. 2:11-cv-02109-JCM-VCF

Petitioner,

ORDER

v.

DOUG GILLESPIE, et al.,

Respondents.

In 2012, the court dismissed Brian Kerry O'Keefe's 28 U.S.C. § 2254 habeas corpus petition, and judgment was entered. (ECF Nos. 9, 10.) The Ninth Circuit Court of Appeals affirmed the dismissal in 2015. (ECF No. 45.) Jonathan Kirshbaum, Federal Public Defender (FPD), now moves to withdraw as counsel for O'Keefe because the federal habeas case has concluded and because the Ninth Circuit has already granted the FPD's request to withdraw. (ECF No. 56.) Good cause appearing,

IT IS ORDERED that counsel for petitioner's motion to withdraw as attorney (ECF No. 56) is **GRANTED**. The FPD is withdrawn as counsel of record for this case.

DATED: August 15, 2022.

James C. Mahan
JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE

Case 2:11-cv-02109-JCM-VCF Document 44 Filed 08/19/14 Page 1 of 2

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2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 BRIAN KERRY O'KEEFE,

8 *Petitioner,*

9 vs.

10
11 SHERIFF DOUG GILLESPIE, *et al.*,

12 *Respondents.*
13

2:11-cv-02109-JCM-VCF

ORDER

14 This represented habeas matter comes before the court on petitioner's proper person
15 motion (#42) for the court to act sua sponte and address an alleged docketing error and
16 motion (#43) for production of transcripts at government expense.

17 The court states now for the third time that petitioner may not file any proper person
18 papers while represented by counsel. Petitioner does not have a constitutional right either
19 to pursue a matter both through counsel and in proper person or indeed to pursue a matter
20 in proper person without counsel. *See, e.g., United States v. Bergman*, 813 F.2d 1027, 1030
21 (9th Cir.1987); *United States v. Halbert*, 640 F.2d 1000, 1009 (9th Cir.1981); *cf. Martinez v.*
22 *Court of Appeal of California*, 528 U.S. 152 (2000)(a criminal defendant has no right of
23 self-representation on direct appeal). As the court also has stated previously, the appellate
24 court's orders regarding petitioner's proper person filings in that court pertain to filings in that
25 court, not in the district court.

26 The court further notes that the current motions do not pertain to a counsel issue, and
27 the court in any event already has ruled that petitioner must pursue any issues in that regard
28 in the court of appeals. See #32.

EXHIBIT THREE